

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

THIS AGREEMENT is made and entered into this _____ day of _____, 2006 by and between the Albuquerque Metropolitan Arroyo Flood Control Authority (“AMAFCA”), a political subdivision of the State of New Mexico, and the Albuquerque-Bernalillo County Water Utility Authority, a political subdivision of the State of New Mexico (“AUTHORITY”), individually referred to as “PARTY” and collectively referred to as the “PARTIES”.

RECITALS:

1. **WHEREAS**, AMAFCA and the AUTHORITY exercise joint jurisdiction in the South Valley; and
2. **WHEREAS**, the AUTHORITY has funding available for water and sewer improvements in the PROJECT area; and
3. **WHEREAS**, the AUTHORITY has identified a need for removal of asbestos water lines and replacement with new water lines, as well as replacement of old sewer lines; and
4. **WHEREAS**, AMAFCA is currently in design of the Isleta Phase I Tributary Storm Drains (“PROJECT”) which includes the construction of roadway and drainage improvements including underground storm sewer pipe, drop inlets, and a surge pond; and
5. **WHEREAS**, AMAFCA and Bernalillo County currently have an agreement specifying the cost sharing of the PROJECT in conjunction with other County improvements; and

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

6. **WHEREAS**, the cost of the PROJECT, together with other Bernalillo County improvements is approximately \$2,250,000 (Two Million Two Hundred Fifty Thousand Dollars);

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND COVENANTS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

SECTION ONE: The purpose of this Agreement is to:

- 1.1 Provide for the funding, construction, and maintenance of water and sewer improvements within the PROJECT.
- 1.2 Identify the AUTHORITY's contribution to the PROJECT, and to establish the provisions for payment to be made to AMAFCA by the AUTHORITY upon award of the PROJECT.

SECTION TWO: AMAFCA agrees to:

- 2.1 Provide plans and specifications for the PROJECT, including plans for water and sewer improvements.
- 2.2 Provide construction engineering services via contract with AMAFCA's consultant during construction of the PROJECT. Construction engineering costs will be allocated between the parties based on construction costs of each party's respective Bid Lots. The Authority shall pay 8% of the actual Water System Improvement Bid Lot for construction engineering services.

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

- 2.3 Within the March 2006 to May 2006 timeframe, advertise, accept bids and award the construction contract for the PROJECT, with the actual costs of the PROJECT (construction engineering and construction costs) to be funded by AMAFCA and the AUTHORITY as detailed in this Agreement. Advertisement and bidding shall be according to the normal AMAFCA procedures for public bidding of public infrastructure projects.
- 2.4 Establish and administer a separate interest bearing checking account for the PROJECT ("Project Account"). All contributions for the PROJECT from AMAFCA and the AUTHORITY will be deposited in the Project Account. PROJECT expenses for construction engineering, construction, and any other related construction expenses, will be disbursed from the Project Account. The account will be invested by AMAFCA in the New Mexico State Short Term Fund, with any interest accrued to be first used on any overruns in the construction engineering or construction costs and as further described in Section 4.2.
- 2.5 Provide the actual bid amount of the Water System Improvement Bid Lot, a prorated share of the General Construction Bid Lot and a prorated share of the construction engineering services contract amount with AMAFCA's consultant, including applicable NMGR, to the AUTHORITY within 15 days after the issuance of the Notice of Award for the Project.
- 2.6 Invoice the AUTHORITY for its contribution to design, construction engineering and construction costs of the PROJECT, as described in Sections 3.1, 3.2, 3.3, 3.4, and 4.3.

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

- 2.7 Administer the contract for construction of the PROJECT and enter into a contract for construction with the selected contractor (herein referred to as the Contractor) and issue a Notice to Proceed to the Contractor. AMAFCA shall be responsible for issuance of any change orders within the original scope of the PROJECT deemed necessary or desirable by AMAFCA, provided, however, that AMAFCA shall advise the AUTHORITY and seek concurrence before issuing a change order regarding any aspect of the PROJECT which affects the installation of water/sewer described in the Water System Improvement Bid Lot and water/sewer operation and maintenance.
- 2.8 Provide Construction Engineering services for the PROJECT including contract administration, material testing, and inspection or other supervision of construction and certification thereof, by AMAFCA's consultant, Smith Engineering, Inc.
- 2.9 Provide AUTHORITY record drawings on mylar and on Compact Disc in PDF file format for the PROJECT as completed.
- 2.10 Include the AUTHORITY as an additional named insured in the contract documents, in the same amounts as required by AMAFCA for the PROJECT. The amount of the commercial general liability insurance shall be at least \$1,000,000.
- 2.11 Upon approval of the final pay application for the PROJECT and for AMAFCA's engineering consultant providing the construction engineering services, invoice the AUTHORITY for any over-runs (after applying interest earned in the Project Account as described in Section 4.2) in the construction engineering and construction costs of the PROJECT, or reimburse the AUTHORITY for any under-runs in the construction engineering and construction costs of the PROJECT.

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

SECTION THREE: AUTHORITY agrees to:

- 3.1 Reimburse AMAFCA for actual construction cost of the Water System Improvement Bid Lot of the PROJECT, which is estimated to be **\$443,000 (Four Hundred Forty Three Thousand Dollars)** including applicable NMGRS and prorated portion of the General Construction Bid Lot for the PROJECT.
- 3.2 Reimburse AMAFCA for the prorated portion of the actual cost of Construction Engineering services based on 8% of the actual construction costs of the Water System Improvement Bid Lot, which is estimated to be **\$27,000.00 (Twenty Seven Thousand Dollars)**.
- 3.3 Reimburse AMAFCA for actual design fee for the Water System Improvement Bid Lot which will be a lump sum of **\$24,622.00 (Twenty Four Thousand Six Hundred Twenty Two Dollars)**.
- 3.4 Pay to AMAFCA, within 30 days of receipt of invoice from AMAFCA. The invoices will include design fees, the AUTHORITY's share of any over-runs in the PROJECT, based on the AUTHORITY providing 100% of the total cost of the Water System Improvement Bid Lot, its prorated share of the General Construction Bid Lot and its prorated share of the construction engineering costs, and that interest accrued in the Project Account will be applied as described in Section 4.2.
- 3.5 Accept PROJECT water/sewer improvements for continuous maintenance upon satisfactory completion of construction and confirm acceptance of same in writing by the AUTHORITY.

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

SECTION FOUR: AMAFCA and the AUTHORITY Agree:

- 4.1 AMAFCA shall administer the contract for construction of the PROJECT, and shall have sole responsibility and authority to execute change orders and resolve contract claims relating to design or construction of the project, provided, however, that AMAFCA shall advise the AUTHORITY and seek concurrence before issuing a change order regarding any aspect of the PROJECT which affects the installation of water/sewer infrastructure, and or the operation and maintenance.
- 4.2 Any interest accrued on monies collected by AMAFCA for the PROJECT shall be first used on any over-runs in the construction engineering or construction costs of the PROJECT. If the interest earned on the Project Account is greater than the total over-runs, the interest will be applied without prorating it to each Bid Lot. Any remaining interest earned on the Project Account will then be disbursed to AMAFCA and the AUTHORITY in a prorated manner based on the initial contributions made to the Project Account. If the interest earned on the Project Account is less than the total over-runs, the interest will be applied in a prorated manner based on the relative costs of each PROJECT Bid Lot, prior to determining additional payments due by the PARTIES.
- 4.3 If any situation arises which adversely affects either PARTY's participation in this Agreement, said PARTY will immediately, and in writing, notify the other PARTY. Any circumstance which materially affects this Agreement will be promptly and equitably resolved by both PARTIES and if necessary, an amendment to this Agreement shall be executed.

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

- 4.4 This Agreement contains the entirety of the understanding of the PARTIES concerning the PROJECT and supersedes all prior discussions or agreements. No modification or amendment shall be enforceable unless done in writing and signed by both PARTIES.
- 4.5 The obligations of each PARTY under this Agreement shall be performed in compliance with all applicable laws, statutes, and ordinances. Nothing herein is intended to constitute any agreement for the PARTIES to perform any activity in violation of the Constitution or Laws of the State of New Mexico or the Ordinances of Bernalillo County.
- 4.6 If any clause or provision in this Agreement is illegal, invalid, or unenforceable, under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the PARTIES hereto that the remainder of this Agreement shall not be affected thereby.
- 4.7 The PARTIES shall be strictly accountable for all receipts and disbursement of the funds provided under this Agreement. AUTHORITY and AMAFCA shall make available to each other, for examination or copying, all records with respect to all matters concerning the PROJECT.
- 4.8 It is specifically agreed between the PARTIES executing this Agreement that this Agreement does not and is not intended to create in the public, or any member thereof, any rights whatsoever, such as, but not limited to, the rights of a third party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

- 4.9 As between the PARTIES, each shall be solely responsible for any and all liability from personal injury, including death, or damage to property, arising from any negligent or intentional act or failure to act of the respective PARTY, its officials, agents, contractors or employees, pursuant to this Agreement. Liabilities of each PARTY shall be subject to the immunities and limitations of the Tort Claims Act §41-4-1, et seq., NMSA, 1978, and any amendments thereto, by entering into this Agreement, the AUTHORITY and its “public employees” as defined in the New Mexico Tort Claims Act, and AMAFCA and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.
- 4.10 In the event of a dispute between the AUTHORITY and AMAFCA, each PARTY shall be responsible for its own costs and attorney’s fees.
- 4.11 AUTHORITY and AMAFCA are expressly not committed to the expenditure of any funds until such time they are authorized by bond issue or other funding source, budgeted, appropriated by their respective public bodies, and approved for expenditure.
- 4.12 This Agreement is subject to approval by the AMAFCA Board of Directors and the Executive Director of the AUTHORITY, and shall not be binding upon the PARTIES until so approved. Upon approval by both the AUTHORITY and AMAFCA, the covenants, terms and conditions of this Agreement shall be binding upon and inure to the benefit of the PARTIES hereto, their successors and assigns.
- 4.13 Upon completion and final acceptance by the AUTHORITY, water and sewer improvements for the PROJECT will become a part of the AUTHORITY’s system and

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

will be owned, operated and maintained by the AUTHORITY. Any change of ownership will be subject to future negotiations and agreement between AMAFCA and the AUTHORITY.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year set forth above.

Date: _____

**Albuquerque Metropolitan Arroyo
Flood Control Authority**

Attest:

Tim Eichenberg, Chairman
Board of Directors

Daniel F. Lyon, Secretary-Treasurer
Board of Directors

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on _____, 2006, by Tim Eichenberg, Chairman of the Board of Directors, on behalf of the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), a political subdivision of the State of New Mexico.

Notary Public

My Commission Expires:

**Agreement to Provide Design, Construction and Maintenance for
Water and Sewer Improvements
Associated with the
Isleta Phase I Tributary Storm Drain Project**

Albuquerque-Bernalillo County Water Utility Authority

Mark S. Sanchez, Executive Director

Date

Roy Robinson, P.E., General Manager
Water Utility Department

Date

Reviewed by City of Albuquerque Legal Department:

Legal Department

Date

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on _____, 2006, by Mark S. Sanchez, Executive Director, for the Albuquerque-Bernalillo County Water Utility Authority, on behalf of said organization.

Notary Public

My Commission Expires:

Hartline Road / Isleta Blvd Tributary Storm Drain Project

Water Lines to be Replaced

